

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN SMITH : CIVIL ACTION  
 :  
 v. :  
 :  
 The DEVEREUX FOUNDATION : NO. 97-3806

MEMORANDUM and ORDER

Norma L. Shapiro, J.

January 20, 1998

Plaintiff Stephen Smith ("Smith"), proceeding pro se, filed an action against defendant The Devereux Foundation ("Devereux") under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e, et seq. Devereux has filed a motion for summary judgment. For the reasons stated below, Devereux's motion will be granted in part and denied in part.

BACKGROUND

Devereux provides residential, clinical and educational services to emotionally challenged adolescents at its Mapleton Campus in Malvern, Pennsylvania. The facility also contains the Mapleton Psychiatric Institute that provides acute care psychiatric inpatient service to children and adolescents.

In December, 1984, Smith began working as a residential counselor in the Hedges Unit at Devereux's Mapleton Campus. Residential counselors are required to maintain order in the facility and respond to physically aggressive residents. Although Devereux had no written policy requiring the use of only male counselors in situations involving the threat of violence,

Smith claims Devereux had an unofficial policy and practice of requesting "male line staff" during emergencies. Smith responded to calls for male assistance. See Log of Stephen Smith, attached as Ex. D to Pltff.'s Mem. Opp. Summ. J. ["Smith Log"]; Aff. of Stephen Smith, attached as Ex. B to Pltff.'s Mem. Opp. Summ. J. ["Smith Aff."]. As a result, he, a male counselor, was placed in greater danger of injury by violent patients. Smith also contends male counselors were more likely to face allegations of abuse by patients because of unavoidable patient injuries in responding to the crises. The greater number of abuse allegations increased the threat of suspension or termination.

On November 14, 1995, Smith was involved in a violent altercation with a patient. Apparently, the patient placed a wet towel in Smith's face and Smith responded by pushing the patient away; the patient's head and shoulder were injured. Smith concedes this altercation was not preceded by a call for "male line staff"; he simply happened to be in the area when the incident arose. See Dep. of Stephen Smith at 126-27, attached as Ex. A to Def.'s Mem. Supp. Summ. J. ["Smith Dep."].

The Department of Welfare ("DPW") conducted an investigation to determine if there was evidence of physical abuse of patients at Devereux; the DPW determined there was "no indication of abuse." Devereux conducted an internal investigation of the incident; it determined Smith exercised poor judgment by shoving

the patient "in the facial area causing [him] to sustain injuries to his arm and head and that plaintiff unnecessarily verbalized anger towards the [patient]." Def.'s Mem. Supp. Summ. J. at 3. Devereux suspended Smith for five days without pay.

Smith filed an internal grievance and a meeting was held with Devereux officials on December 11, 1995. At that meeting, Smith raised the issue of requests for "male line staff" to intercede in potentially violent situations involving patients. Smith informed the Devereux officials that this practice placed male counselors at greater risk of injury than female counselors. See Smith Dep. at 68.

On December 23, 1995, Kenneth Tenley ("Tenley"), Devereux Program Director, sent an electronic mail message to Mapleton staff:

Male and female staff are trained in Crisis Prevention and Intervention and so are qualified equally to intervene. Mapleton does not support or encourage the perception that male staff are more capable or skilled in providing crisis intervention services to clients/patients. No staff member, be that direct care, supervisor, nurse, clinician or other, is to request solely male assistance in such crisis events, using sex as a criterion.

E-mail from Kenneth Tenley, attached as Ex. E-6 to Pltff.'s Mem. Opp. Summ. J. ["Tenley E-mail"]. This gender-neutral stance was affirmed at several residential staff meetings held in early 1996. See Smith Dep. at 85. Smith admits Devereux staff have made gender-neutral calls for assistance in almost all instances

since Tenley sent the electronic mail message; in a few instances, Devereux employees have resorted to requests for "male staff," after which the offending employees were disciplined by Devereux. See id. at 92.

After the internal grievance procedure concluded in Devereux's favor, Smith, alleging discrimination based on sex, filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") on January 12, 1996. Smith argued Devereux's policy and practice of assigning male counselors to high-risk situations was discrimination in violation of Title VII. The EEOC conducted an investigation into Smith's charge and subsequently issued a Right to Sue letter.

During 1996, Smith was transferred from Devereux's Hedges unit to the Gables unit. There was less restraint of patients in the Gables unit than the Hedges unit. See id. at 98-99. "[N]ever once did somebody say 'We need male staff' at the Gables setting." Id. at 99.

On October 24, 1996, Smith was involved in a second altercation with a patient. Smith was playing football with Gables residents when one patient struck Smith's arm. Smith allegedly pinned the patient to the ground and cursed at him. Devereux contacted DPW to report the incident; DPW conducted an

investigation.<sup>1</sup> Devereux issued a written warning to Smith for using "unauthorized and untherapeutic techniques with the child." Def.'s Mem. Supp. Summ. J. at 5. Smith was not suspended for his conduct. There is no evidence this incident was related to a call for "male line staff."

Smith's Complaint seeks compensatory and punitive damages and a permanent injunction. Devereux moves for summary judgment on the following grounds: 1) Smith has failed to establish a prima facie case of sex discrimination under Title VII; 2) Title VII's statute of limitations bars Smith's action; 3) Devereux is entitled to summary judgment on damages because Smith's injuries were not caused by the challenged sex-based policy and practice and any physical or emotional damages Smith suffered are covered exclusively by the Pennsylvania Workers' Compensation Act; and 4) Smith's claim for injunctive relief is moot.

## **DISCUSSION**

### **I. Standard of Review**

Summary judgment may be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P.

---

<sup>1</sup> The record does not indicate what action, if any, DPW took as a result of its investigation.

56(c). A defendant moving for summary judgment bears the initial burden of demonstrating there are no facts supporting the plaintiff's claim; then the plaintiff must introduce specific, affirmative evidence there is a genuine issue for trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-324 (1986). "When a motion for summary judgment is made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

The court must draw all justifiable inferences in the non-movant's favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 248. The non-movant must present sufficient evidence to establish each element of its case for which it will bear the burden at trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-86 (1986).

## **II. Prima Facie Case Under Title VII**

Title VII provides that it is unlawful for an employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment" or

to "limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a).

To withstand summary judgment, a Title VII plaintiff must present sufficient evidence to create a question of material fact whether his employer intentionally discriminated against him. See Watson v. Fort Worth Bank & Trust, 487 U.S. 977, 985 (1988); Pollock v. American Telephone & Telegraph Long Lines, 794 F.2d 860, 864 (3d Cir. 1986); EEOC v. Hall's Motor Transit Co., 789 F.2d 1011, 1015 (3d Cir. 1986). The Supreme Court established in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981), a three-step process by which a plaintiff can establish intentional discrimination by his employer. First, a plaintiff must show his employer acted in a way that materially affected the plaintiff's employment conditions while treating other employees not belonging to the protected class more favorably. See Bellissimo v. Westinghouse Elec. Corp., 764 F.2d 175, 179 (3d Cir. 1985), cert. denied, 475 U.S. 1035 (1986); Duffy v. Wheeling Pittsburgh Steel Corp., 738 F.2d 1393, 1395 (3d Cir.), cert. denied, 469 U.S. 1087 (1984).

"Once plaintiff has established a prima facie case of discrimination, the burden shifts to the defendant to dispel this presumption of discrimination, and articulate 'some legitimate, nondiscriminatory reason for the employee's rejection.'" Hankins v. Temple Univ., 829 F.2d 437, 440 (3d Cir. 1987) (quoting Burdine, 450 U.S. at 253).

Then the presumption of intentional discrimination created by plaintiff's prima facie case dissolves, see Burdine, 450 U.S. at 254-55, and the "ultimate burden of persuasion, which always rests with the plaintiff, may then be satisfied by proving, by a preponderance of the evidence, that the alleged reasons proffered by the defendant are pretextual, and that the defendant intentionally discriminated against the plaintiff." Hankins, 829 F.2d at 440.

The framework established under McDonnell Douglas "is based on the assumption of membership in a socially disfavored group." McMahon v. Impact Sys., Inc., No. 91-6060, 1992 WL 201004, at \*3 (E.D. Pa. Aug. 11, 1992). In actions involving claims of discrimination against men, the plaintiff must show that "background circumstances support the suspicion that the defendant is the unusual employer who discriminates against the majority." Id. (citing cases).

The McDonnell Douglas analysis is not a "rigid formula" and should not be "stubbornly" applied. EEOC v. Metal Serv. Co., 892



F.2d 341, 347 (3d Cir. 1990). "Instead, courts must be sensitive to the myriad of ways such an inference [of discrimination] can be created." Id. at 348; see Weldon v. Kraft, Inc., 896 F.2d 793, 798 (3d Cir. 1990); Hicks v. Arthur, 878 F. Supp. 737, 742 n.10 (E.D. Pa.), aff'd 72 F.3d 122 (3d Cir. 1995).

Devereux maintained no written policy treating male counselors differently than female counselors. All counselors received the same crisis training; female employees led some of the training sessions. See Smith Dep. at 27. The manuals given to counselors did not authorize requests for male assistance only. See id. at 30. When Devereux staff made requests for "male line staff," females also responded to the calls.

While Devereux has shown that both females and males responded to calls for assistance directed at male counselors, Smith has presented questionnaires prepared by the EEOC and sent to Smith's co-workers. Brendan O'Neill, a male counselor, replied that he was "asked to do more than [his] female counterparts," was subjected to "more risk of injury" and was placed "in a position of greater possibility to be accused of negative behavior by clients." Brendan O'Neill's Questionnaire, attached as Ex. E-12b to Pltff.'s Mem. Opp. Summ. J. ["O'Neill Questionnaire"]. David Woodward reported that Devereux supervisors expected male counselors to step in and subdue assaultive patients. See David Woodward's Questionnaire,

attached as Ex. E-12c to Pltff.'s Mem. Opp. Summ. J. ["Woodward Questionnaire"]; Aff. of David Woodward, attached as Ex. F to Pltff.'s Mem. Opp. Summ. J. ["Woodward Aff."]. Other counselors have confirmed Smith's allegations. See Aff. of Ken Lewis, attached as Ex. F to Pltff.'s Mem. Opp. Summ. J. ["Lewis Aff."]; Aff. of Jeffrey Howell, attached as Ex. F to Pltff.'s Mem. ["Howell Aff."].

Rebecca Sheridan, a female counselor, has stated that on certain occasions she was prevented from assisting in crisis situations because she was not male. She allegedly was informed, "No, we need male staff." Rebecca Sheridan Aff., attached as Ex. F to Pltff.'s Mem. Opp. Summ. J. ["Sheridan Aff."]. According to Smith, when female counselors did assist in emergency situations, they were often assigned to subsidiary roles, such as holding open the door while the male counselors handled hostile patients. See Smith Aff.

Smith also has submitted calculations showing that male counselors suffered more injuries than female counselors from crisis situations; there was also a higher rate of abuse allegations against male staff. Devereux claims "it is undisputed that the plaintiff has no statistical evidence to support his contention that calls for male staff have caused him and other male employees to be subjected to higher rates of injury, investigation, or reprimand." Def.'s Mem. Supp. Summ. J.

at 18. But Smith has provided statistical evidence in support of his contention. Whether the figures are accurate is a question of material fact to be resolved at trial.

Smith has shown that Devereux staff treated male counselors differently than female counselors by assigning more difficult and dangerous situations to them. This satisfies the first step in the McDonnell Douglas test. Devereux has not offered any legitimate reason for treating males differently than females; Devereux denies there was disparate treatment of male and female counselors. Because Devereux has not offered any business reason for treating counselors differently based on sex, the presumption of discrimination created by Smith's initial showing does not drop away and Smith need not establish the existence of any pretext. See Hankins, 829 F.2d at 440.

Smith needs to offer evidence that Devereux is the "unusual employer" discriminating against men. McMahon, 1992 WL 201004, at \*3. There is evidence in the record that males were considered better able to subdue aggressive patients. See, e.g., Howell Aff. A staff perception that male counselors could handle crisis situations in a safer and quicker manner than female counselors, if motivating the alleged policy and practice of treating male counselors unfavorably, provides evidence that Devereux may have been the "unusual employer" discriminating against men.

Applying the McDonnell Douglas test in a flexible manner, see Metal Serv. Co., 892 F.2d at 348, Smith has established a prima facie case of sex discrimination under Title VII sufficient to withstand summary judgment. At trial, plaintiff will have the burden of proving not only sex discrimination, but that the discriminatory policy of calling "male line staff" at Mapleton prior to the explicit policy to the contrary caused him actual rather than theoretical harm. See Robinson v. City of Pittsburgh, 120 F.3d 1286, 1296-97, 1301 (3d Cir. 1997).

### **III. Statute of Limitations**

Title VII's statute of limitations provides that a charge "shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred." 42 U.S.C. § 2000e-5(e). The statute of limitations is extended to three hundred days if the employee "initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof." 42 U.S.C. § 2000e-5(e). Smith did not mark the box on his EEOC charge for cross-filing with the Pennsylvania Human Relations Commission, so the three hundred day statute of limitations does not appear to apply.

Devereux argues the statute of limitations began to run on December 5, 1984, Smith's first day at work, because that was

when Smith first heard calls for "male line staff." According to Devereux, the statute of limitations expired 180 days later, on June 3, 1985. Because Smith did not file his charge with the EEOC until January 12, 1996, Devereux claims it was untimely and must be dismissed.

The statute of limitations begins to run when the employee's cause of action accrues. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1385 (3d Cir. 1994). The accrual date occurs when "the plaintiff knows, or reasonably should know, (1) that he has been injured, and (2) that his injury has been caused by another party's conduct." Bohus v. Beloff, 950 F.2d 919, 924-25 (3d Cir. 1991) (citation omitted); see Oshiver, 38 F.3d at 1386. As Devereux argues, on Smith's first day at work, he had notice of his injury (the calling of male counselors for high risk situations) and he knew the injury was attributable to Devereux. Ordinarily the statutory period would run from that point.

Smith argues Devereux's discriminatory policy amounted to a continuing violation of Title VII. Under Delaware State College v. Ricks, 449 U.S. 250 (1980), "a plaintiff may not rely on the continuing violation theory to advance claims about isolated instances of discrimination concluded in the past, even though the effects persist into the present." EEOC v. Westinghouse Elec. Corp., 725 F.2d 211, 218 (3d Cir. 1983), cert. denied, 469

U.S. 820 (1984). But where there is a continuing discriminatory policy, "each application of that policy to an employee constitutes a discrete act of discrimination." Courtney v. LaSalle Univ., 124 F.3d 499, 505 (3d Cir. 1997). In such situations, the "time for filing a charge runs from the most recent application of the policy to plaintiff, regardless of when he received notice of the policy." Id. at 506.

To apply the continuing violation theory, plaintiff must show: 1) the existence of a discriminatory policy; and 2) its application to him. See id. The continuing violation theory applies to policies that are "facially discriminatory." Lorance v. AT&T Tech., Inc., 490 U.S. 900, 912 n.5 (1989). Smith needs to show more than "isolated or sporadic acts" of discrimination. He must introduce evidence showing that Devereux had, in essence, a "standard operating procedure" of preferring male counselors for assaultive situations. Jewett v. International Telephone & Telegraph Corp., 653 F.2d 89, 91-92 (3d Cir.), cert. denied, 454 U.S. 969 (1981).

Although Devereux did not have a written policy requiring the use of male counselors in dangerous situations, Smith has introduced evidence that Devereux staff issued calls for "male line staff." Even though both male and female counselors often responded to those calls, there is evidence in the record that female counselors were told to stand aside or perform non-

threatening tasks such as holding a door open while the male counselor grappled with the patient. Smith has presented evidence that this unwritten practice at Devereux lasted from the time he began his job until December, 1995, when Tenley circulated the electronic mail message to Mapleton staff.

The alleged requests for "male line staff" making male counselors face greater risks than female counselors were not isolated incidents at Devereux; they could be considered a policy to place male rather than female counselors in the face of hostile patients. If Devereux did have such a policy, it would be "facially discriminatory," see Lorange, 490 U.S. at 912 n.5, and would be a continuing violation. Because questions of material fact remain regarding the existence of this implicit policy, the court will assume the continuing violation theory applies.

The statute of limitations began to run from the last date of the policy's application to Smith. According to Smith's contemporaneous diary of events occurring at Devereux, while still at Mapleton he responded to a call for "male staff" on November 14, 1995, prior to the December 23, 1995, Tenley electronic message prohibiting the practice.<sup>2</sup> Smith filed his EEOC charge less than one month later, well within the limitation

---

<sup>2</sup> This incident was separate from the altercation occurring the same day that resulted in discipline.

period. This action is not barred by the statute of limitations; summary judgment will not be granted on this ground.<sup>3</sup>

#### **IV. Damages**

Devereux claims it is entitled to summary judgment on damages because Smith is unable to recover for physical or emotional injuries under Title VII. Devereux maintains those injuries are governed by the Pennsylvania Workers' Compensation Act and Smith must seek redress under state law. In effect, Devereux's position is that the state workers' compensation law preempts any recovery under Title VII for such injuries.<sup>4</sup>

Devereux cites cases where the plaintiff was seeking relief under state tort law for work injuries compensable only under workers' compensation law; defendant also relies on Title VII cases prior to the 1991 statutory amendments allowing recovery of "compensatory and punitive damages." 42 U.S.C. § 1981a(a)(1). The term "compensatory damages" includes "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses." 42 U.S.C. § 1981a(b)(3) (providing cap on those damages).

---

<sup>3</sup> Because the court assumes the continuing violation theory applies to this action, the court need not address defendant's arguments regarding the equitable tolling of the statute of limitations.

<sup>4</sup> The court previously addressed Devereux's argument at a hearing held on December 18, 1997, in which the court denied Devereux's motion to amend its Answer to include workers' compensation preclusion as an affirmative defense.



Under the Supremacy Clause, federal statutory law preempts state or local law. See U.S. Const. Art. VI.<sup>5</sup> State law interference with or preemption of federal law is invalid. See, e.g., Hamm v. City of Rock Hill, 379 U.S. 306, 311 (1964); Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 30-31, 211 (1824). The state workers' compensation law does not provide the sole remedy under which Smith can recover for physical or emotional injuries covered by Title VII.

Devereux also argues the physical injuries and disciplinary action against Smith because of the patient incident on November 14, 1995, were not caused by Devereux's alleged policy and practice of requesting male counselors for high risk situations. Smith admitted he was not called to the scene on November 14, 1995, by a request for "male line staff"; he simply happened to be in the vicinity when the problem arose. See Smith Dep. at 126-27. Neither Smith's physical injuries nor the discipline imposed were caused by Devereux's policy of requesting male instead of female assistance. Smith cannot recover under Title VII for harm as a result of the November, 1995 altercation. The court will grant summary judgment in favor of Devereux as to damages from this incident.

---

<sup>5</sup> The Supremacy Clause provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land ...." U.S. Const. Art. VI.

Smith was also disciplined after an altercation with a patient on October 24, 1996. Smith was playing football when he pinned a patient to the ground and cursed at him. No call for "male line staff" preceded this incident. There is no causation between Devereux's alleged Title VII violation and the discipline following this incident. The court will grant summary judgment in favor of Devereux as to damages from this incident.

Smith also allegedly suffered general damages as a result of Devereux's policy and practice. Smith claims he responded to calls for "male line staff" and was required to intervene in hostile situations where female counselors were excused. See Smith Log; Smith Aff. Smith alleges his preexisting back condition was aggravated by handling unruly patients, see Aff. of Michael J. Tancredi, Doctor of Chiropractic, attached as Ex. D to Pltff.'s Mem. Opp. Summ. J. ["Dr. Tancredi Aff."], and he would not have had to intervene as often if he were female. There is evidence linking a general aggravation of Smith's back condition (not related to the November, 1995 and October, 1996 incidents) to specific applications of Devereux's policy and practice to Smith.

Smith claims he suffered emotionally as a result of more frequent exposure to dangerous encounters than female counselors. Emotional damages are recoverable under Title VII, see 42 U.S.C. §§ 1981a(a)(1), (b)(3), if the jury finds them actually, not

potentially, caused by the application of Devereux's policy and practice to Smith. It is not clear that under no circumstances can he recover damages for emotional injury caused by his response to calls for "male line staff." Summary judgment on all damages is not appropriate.

#### **V. Injunctive Relief**

Smith's Complaint seeks a "permanent injunction enjoining Defendant from discriminating against Plaintiff in any matter that violates Title VII or the PHRA." Complaint at 4. After Smith filed his internal grievance following his discipline in November, 1995, Devereux issued a statement instructing all staff to refrain from issuing calls for "male staff." See Tenley E-mail. All residential counselors received this notice and were aware of Devereux's position that gender-neutral calls were required from that date on. See Smith Dep. at 85. In the few instances where Devereux staff made calls for "male staff" thereafter, they were disciplined. See id. at 92.

Smith also has been transferred to the Gables unit. There is less need for restraining patients at Gables and Smith has never heard Devereux staff at Gables request "male staff." See id. at 99. Devereux has prospectively corrected any violation of Title VII. Smith's claim for injunctive relief under Title VII is moot; the court will grant summary judgment on this claim.

#### **CONCLUSION**

Smith has met his burden of establishing a prima facie case for discrimination under Title VII. Because Devereux's alleged policy was a continuing violation, Smith filed his EEOC charge within the applicable statutory time period. Smith may not recover for damages related to the November, 1995, and October, 1996, patient incidents; however, Smith may be entitled to recover damages for the aggravation of his back condition and emotional distress caused by Devereux's calls for "male staff" to which he responded. The court will grant summary judgment on Smith's request for injunctive relief.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN SMITH	:	CIVIL ACTION
	:	
v.	:	
	:	
The DEVEREUX FOUNDATION	:	NO. 97-3806

ORDER

AND NOW, this 20th day of January, 1998, upon consideration of defendant The Devereux Foundation's ("Devereux") motion for summary judgment, plaintiff Stephen Smith's ("Smith") response thereto, and in accordance with the attached Memorandum, it is hereby **ORDERED** that Devereux's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART** as follows:

1. Devereux's motion for summary judgment is **GRANTED** as to Smith's damages related to the November 14, 1995, and October 24, 1996, incidents.
2. Devereux's motion for summary judgment is **GRANTED** as to Smith's request for injunctive relief under Title VII and the PHRA.
3. Devereux's motion for summary judgment is **DENIED** on all other grounds.

---

Norma L. Shapiro, J.